



HAWAII STATE ETHICS COMMISSION

State of Hawaii • Bishop Square, 1001 Bishop Street, ASB Tower 970 • Honolulu, Hawaii 96813

INFORMAL ADVISORY OPINION NO. 2004-16

On June 16, 2004, the Hawaii State Ethics Commission ("Commission") issued a charge ("Charge") against a state employee. The Charge alleged that the employee used state time, equipment, facilities, and state personnel for private business purposes, in violation of the State Ethics Code, Chapter 84, Hawaii Revised Statutes ("HRS").

On August 9, 2004, the employee submitted, through her private attorney, a written response to the Charge. The employee generally admitted to the allegations in the Charge and submitted payment of \$500 in restitution to the State of Hawaii. The Commission viewed the employee's admission to the Charge and her payment of restitution to the State as the employee's acceptance of responsibility for her conduct as set forth in the Charge. The Commission was informed that the conduct in question had ceased. In light of this, and in light of the employee's cooperation during the Commission's investigation of this matter, the Commission did not believe that further charge proceedings against the employee were warranted. Instead, the Commission decided to issue the employee an Informal Advisory Opinion.

Facts

The Commission received information that the employee, who had been employed by the State for about fifteen years, was involved in private business activities at her state agency relating to the sale of crafts and craft supplies. The Commission also received information that the employee was involved in private business activities at the state agency relating to the sale of fish. The Commission initiated an investigation, which involved interviewing witnesses and reviewing records relevant to this matter. During the course of the Commission's investigation, the employee and her private attorney met with the Commission's staff and the employee provided testimony, under oath, concerning these alleged activities.

A. Sale of Crafts and Craft Supplies.

The employee and her spouse operated a private business. State Department of Taxation records indicated that a general excise tax license was issued to the business. The employee made and sold crafts for her business. She also sold craft supplies for her business.

The employee informed the Commission's staff that her craft-making activities first began as a hobby and later developed into a business. She and other employees at her state agency made crafts together in the office break room. The employee stated that her craft-making activities at work only occurred during lunch periods and break times. However, the Commission obtained information through its investigation that

craft-making activities by the employee and by other employees in the agency occurred during work hours as well.

Through her business, the employee sold crafts at trade shows and craft fairs. The crafts that she sold included crafts that were made at her state agency by the employee and by other employees. The state employee received payment from other employees for selling the crafts that they made. The employee was paid twenty percent of the sales price of the crafts that she sold for other employees.

Through her business, the employee also sold craft supplies to other employees at her state agency. Although the employee asserted that most of her private business activities took place after work hours and from her home, she also acknowledged that private business transactions were conducted at her state agency.

The employee acknowledged using the state telephone in her office to take sales orders for craft supplies from other state employees in the agency, and to arrange for employees to pick up their orders from her. The employee acknowledged receiving these sales orders during her state work hours. In some instances, she received sales orders from employees while discussing state business with them over the telephone in the office.

The employee also acknowledged taking sales orders, delivering orders, and collecting payment for orders in person in her state office and in other offices in her state agency. She took sales orders from other employees who worked in her state office. She also took sales orders from employees who worked in other offices in her state agency and who visited the employee's office to place orders with her, and to pick up and pay for their orders. The employee acknowledged that this sometimes occurred during her work hours. She also acknowledged delivering sales orders to employees in other offices of the state agency.

The Commission's investigation also indicated that the employee was assisted in her private business activities at the agency by a co-worker. The Commission's staff interviewed the co-worker, who provided information about her participation in these activities.

The co-worker's state duties included making deliveries and running errands for the office. The co-worker acknowledged that she helped the employee who was the subject of this opinion by delivering craft supplies that were purchased by employees at the agency. The co-worker made private sales deliveries to employees at different offices in the agency on working days. These deliveries were sometimes combined with official job-related deliveries by the co-worker.

B. Sale of Fish

At various times, private sales of fish also took place in the state agency. The Commission learned, through its investigation, that a former employee delivered fish to the agency for sale to employees.

The former employee had been a supervisor who had worked in the same state office as the employee in this case. The former employee also was a commercial fisherman. After he retired from his state job, the former employee brought fish to the office to sell. He did this at the invitation of the employee who was the subject of this opinion, and at the invitation of other employees at the agency who asked to purchase fish from him.

On several occasions, the former employee delivered fish to the office for sale to employees. The fish had been cut and pre-packaged by the former employee, and was packed in a large cooler. The former employee delivered the cooler to the office, where it was stored. Employees of the state agency came to the office during work hours to purchase the fish.

The employee who was the subject of this opinion assisted the former employee. The employee notified other employees at work when fish was for sale in the office. She also collected money from employees who purchased fish, and turned this money over to the former employee when he returned to the office to retrieve his cooler. The employee estimated that she collected on average a little over \$100 from the sale of fish each time that it was sold in the office.

The Charge

Based on its investigation, the Commission found reason to believe that the employee used state time, equipment, facilities, and personnel for private business activities in violation of the State Ethics Code. On June 16, 2004, the Commission issued a charge against the employee. The Charge alleged that the employee violated HRS section 84-13 and HRS section 84-13(3). The specific conduct that created the basis for the Charge was as follows:

- Using a state facility to store and make crafts for private sale;
- Using state time to make crafts for private sale;
- Using state time for the private sale of craft supplies to state agency employees;
- Using a state facility for the private sale of craft supplies to state agency employees;
- Using state equipment (state telephones) for the private sale of craft supplies to state agency employees;
- Using state personnel to assist in carrying out private business activities;
- Using a state facility for the private sale of fish to state agency employees;

- Using state equipment (state telephones) for the private sale of fish to state agency employees.

In accordance with HRS section 84-31(b), the employee was notified of the Charge and afforded an opportunity to respond to the Charge. Through her private attorney, the employee filed a written response generally admitting to the allegations in the Charge. She also agreed to submit restitution to the State of Hawaii in the amount of \$500.

Application of the State Ethics Code

The state employee was subject to the provisions of the State Ethics Code, Chapter 84, HRS. The “fair treatment” section of the State Ethics Code, HRS section 84-13, was applicable to the employee’s conduct in this case. This section of the State Ethics Code states, in pertinent part, as follows:

§ 84-13 Fair treatment. No legislator or employee shall use or attempt to use the legislator’s or employee’s official position to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment, for oneself or others; including but not limited to the following:

...

- (3) Using state time, equipment or other facilities for private business purposes.

HRS section 84-13 prohibits a state employee from using or attempting to use the employee’s state position to obtain any unwarranted advantages. HRS section 84-13(3) specifically prohibits a state employee from using state time, equipment, or state facilities for private business purposes.

The Commission’s investigation indicated that the employee used state time, equipment, and facilities for private business activities. This was prohibited by HRS section 84-13 and section 84-13(3). Moreover, the investigation indicated that the employee had used another employee’s services, as a state employee, to assist with her private business activities at the agency. This was prohibited by HRS section 84-13.

The employee informed the Commission’s staff that her craft-making activities at her state agency began as a hobby. She and other employees made crafts together at work for recreation. But the employee stated that the supplies for craft-making were very expensive. She decided to start a business in order to purchase craft-making supplies at wholesale prices using her business’ general excise tax license. Other employees at the agency approached the employee and asked to purchase craft supplies from her. Through her business, the employee began to sell craft supplies to employees at her state agency. Through her business, the employee also sold crafts that she and other employees made at the agency. The employee stated that she was not aware of the State Ethics Code at the time.

The employee informed the Commission's staff that when her business first began, most of her customers were state agency employees. She estimated that her gross monthly sales at the time amounted to approximately \$1,000 or less per month. Sales invoices for the employee's business, subpoenaed by the Commission, confirmed this information. The employee claimed not to have profited substantially from these sales because she charged her customers close to wholesale prices. Nevertheless, the employee appeared to have conducted a substantial amount of private business at the state agency. The employee's use of state resources – state time, equipment, facilities, and personnel – to facilitate her private business activities also appeared to have been substantial.

The employee also used state resources to sell fish to other employees at her agency. She was not paid for doing this, and it did not appear that she benefitted financially from these sales transactions. At the same time, however, the Commission found that the sale of fish was clearly a private business activity that should not have taken place in a state facility. On more than one occasion, the employee participated in this activity by notifying other employees at work when fish was being sold in the office and by collecting money from employees who purchased fish. This was prohibited by HRS section 84-13 and section 84-13(3).

The purpose of the "fair treatment" law is to prevent the misuse of official position and the misuse of government resources by state employees. The law is clear that state resources cannot be used for private business purposes. The Commission noted that even assuming, for the sake of argument, that the employee in this case may not have been aware of this law, there was no excuse for the employee's actions. The Commission has, for many years, informed state employees that they may not conduct private business activities at work. This prohibition extends to the use of state time, equipment, facilities, as well as state personnel, for private business activities. Private business activities include activities that facilitate the sale of goods or services. In this case, the making of crafts for sale at trade shows and craft fairs, as well as the private sale of craft supplies and fish, all constituted private business activities. The State Ethics Code prohibited the employee from engaging in these activities at her state agency.

The Commission was informed that the employee's business activities at the state agency relating to crafts and the sale of craft supplies had ceased. The Commission also was informed that the private sale of fish at the state agency had ceased. The agency had taken steps to ensure that no private business activities were conducted at the agency, and that employees were made aware of the requirements of the State Ethics Code.

The Commission noted that the employee had cooperated during the investigation of this matter, and viewed the employee's admission to the charge and payment to the State as demonstrating her acceptance of responsibility for her conduct. In light of these factors, the Commission did not believe that further charge proceedings against the employee were warranted in this case.

Conclusion

In light of the foregoing, the Commission decided that it would not take further action with respect to the Charge. It was the Commission's intent that this opinion would increase the employee's awareness of the State Ethics Code and would ensure the employee's future compliance with the law.

Dated: Honolulu, Hawaii, November 23, 2004.

HAWAII STATE ETHICS COMMISSION

Dawn Suyenaga, Vice Chairperson
Nadine Y. Ando, Commissioner
Robert R. Bean, Commissioner
Carl Morton, M.D., Commissioner

Note: Chairperson Ronald R. Yoshida was not present at the meeting during which this Informal Advisory Opinion was considered.